

OK to enter
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10/18/06

REMARKS

Claims 1 to 21, 23 and 24 stand pending in the application. Claim 23 is amended to clarify that the Claim is dependent upon Claim 16, which was previously amended to incorporate the subject matter of cancelled Claim 22. The amendment does not raise any issues that require further search and consideration. No new matter is being added.

The Examiner is respectfully requested to reconsider the claims and withdraw the finality of the rejections in view of the remarks contained herein.

PREMATURENESS OF THE FINAL REJECTION

The Examiner has stated that the present action is made final because Applicant's amendment necessitated the new ground(s) of rejection. *Final Rejection* of August 17, 2006, page 6. However, Applicants respectfully suggest that the finality of the present action is premature.

Under MPEP 706.07(a), a final rejection is improper where there is a new ground of rejection introduced which was not necessitated by an amendment to the claims. The new grounds for rejection under § 112, relating to the alleged indefiniteness of the term "a capillary delivery pressure," were not necessitated by Applicants amendments. It is respectfully pointed out that this term was not the subject of a previous amendment. Even more, the term was not referred to in any of Applicants' previous arguments. Thus, the rejection under § 112 was not necessitated by a previous amendment and the finality of the present action is not proper.

Accordingly, Applicants respectfully request that the finality of the present rejections be withdrawn.